

Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED

JUL 13 2007

In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION

Amendment of Section 73.202(b),)

Table of Allotments, FM Broadcast Stations.)

(Ione, Oregon; Walla Walla, Washington; and)

Athena, Hermiston, La Grande, and Arlington,)
Oregon))MB Docket No. 05-9

RM-11141

RM-11242

(Monument, Prairie City, Prineville, and Sisters,)

Oregon; Weiser, Idaho; The Dalles, Tualatin,)

Eugene, Albany, Lebanon, Paisley, and Diamond)

Lake, Oregon and Goldendale, Washington))

MB Docket No. 05-10

RM-11140

RM-11241

RM-11279

ORDER**Adopted: July 11, 2007****Released: July 13, 2007**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Motion To Sever filed by Two Hearts Communications, LLC, ("Two Hearts"), licensee of FM Station KHSS, Channel 264C3, Walla Walla, Washington, relating to MB Docket No. 05-09. Additionally, SSR Communications, Inc. ("SSR Communications") and Horizon Broadcasting Group, LLC, ("Horizon Broadcasting"), licensee of Station KWPK-FM, Channel 281C2 at Sisters, Oregon¹ (collectively, "Joint Parties") filed jointly a Motion to Sever, concerning MB Docket No. 05-10. No other pleadings were received.

2. **Background.** In MB Docket No. 05-9,² Two Hearts filed a timely counterproposal, proposing the reallocation of FM Station KHSS to Channel 264C2 at Athena, Oregon, as its first local service,³ which conflicted with the proposed allotment of Channel 265C at Prairie City, Oregon, as its

¹ We issued an *Order to Show Cause* directed at Horizon Broadcasting, requesting the licensee to show cause why its Station KWPK-FM's license, File No. BLH-20010516AAI, should not be modified to specify operation on Channel 282C2 in lieu of Channel 281C2 at Sisters, Oregon. See *Monument, Oregon; Prairie City, Prineville, and Sisters, Oregon and Weiser, Idaho; The Dallas, Tualatin, Eugene, Albany, Lebanon, Paisley, and Diamond Lake, Oregon and Goldendale, Washington*, Order to Show Cause, 21 FCC Rcd 3332 (MB 2006).

² See *Ione, Oregon*, Notice of Proposed Rule Making, 20 FCC Rcd 1287 (MB 2005) ("Notice")

³ Specifically, the counterproposal requested the substitution of Channel 264C2 for Channel 264C3 at Walla Walla, Washington, reallocation of Channel 264C2 from Walla Walla, Washington to Athena, Oregon, as its first local service, and the modification of the FM Station KHSS license; substitution of Channel 295C2 for vacant Channel 261C2 at Arlington, Oregon; substitution of Channel 261A for Channel 263A at Hermiston, Oregon, and the modification of the FM Station KQFM license; substitution of Channel 225C1 for Channel 260C1 at La Grande, Oregon, and the modification of the FM Station KWRL license; and the allotment of Channel 258A rather than Channel 295A at Ione to resolve the conflict with the *Notice's* proposal.

first local service, requested by SSR Communications in a timely counterproposal⁴ in MB Docket No. 05-10.⁵ For this reason, the *Report and Order* consolidated the two proceedings.⁶ To resolve the conflict, the *Report and Order* approved a Settlement Agreement in compliance with Section 1.420(j) of the Commission's Rules,⁷ which provided a global resolution to this consolidated proceeding.⁸ The *Report and Order* allotted Channel 280C1 at Monument, Oregon, as its first local service and Channel 260C at Prairie City, Oregon, as its first local service as provided in the Settlement Agreement; substituted Channel *247C1 for vacant Channel *280C1 at Weiser, Idaho; and allotted Channel 267C1 at Prineville, Oregon, as its third FM commercial broadcast service as proposed in SSR Communications' counterproposal. Additionally, the *Report and Order* granted Two Hearts' counterproposal by substituting Channel 264C2 for Channel 264C3 at Walla Walla, Washington, reallocating Channel 264C2 from Walla Walla, Washington to Athena, Oregon, as the community's first local service and modifying the Station KHSS license to reflect this change; substituting Channel 261A for Channel 263A at Hermiston, Oregon, and modifying the Station KQFM license; substituting Channel 225C1 for Channel 260C1 at La Grande, Oregon, and modifying the Station KWRL license accordingly; substituting Channel 295C2 for vacant Channel 261C2 at Arlington, Oregon; and allotting Channel 258A at Ione, Oregon, as its first local service. Moreover, the *Report and Order* dismissed the Joint Petitioners' proposal,⁹ requesting Station KACI-FM, Channel 249C2, The Dalles, Oregon to Channel 250C2 at Tualatin, Oregon along with the proposed channel substitutions necessary to accommodate this reallocation due to a site

⁴ The SSR Communications counterproposal requested the allotment of Channel 265C at Prairie City, Oregon, as its first local service; the allotment of Channel 267C1 at Prineville, Oregon, as its third FM commercial broadcast service; the substitution of Channel 247C1 for vacant Channel 280C1 at Weiser, Idaho; and the substitution of Channel 282C2 for Channel 281C2 at Sisters, Oregon, and the modification of the Station KWPK-FM license. To resolve the existing conflict with the *Notice II* proposal, SSR Communications also requests the allotment of Channel 280C in lieu of Channel 266A at Monument, Oregon.

⁵ See *Monument, Oregon*, Notice of Proposed Rule Making, 20 FCC Rcd 1287 (MB 2005) ("*Notice II*").

⁶ See *Ione, Oregon et al.*, Report and Order, 21 FCC Rcd 10017 (MB 2006).

⁷ 47 C.F.R. § 1.420(j).

⁸ The Settlement Agreement requested the allotment of Channel 260C in lieu of Channel 265C at Prairie City, Idaho to resolve the existing conflict between the Two Hearts and SSR Communications counterproposals. Moreover, the Settlement Agreement proposed the allotment of Channel 280C1 in lieu of Channel 280C at Monument, Oregon, which resolved the existing conflict with a proposal filed jointly by Portland Broadcasting, L.L.C. licensee of Station KXPC-FM, Lebanon, Oregon, Columbia Gorge Broadcasters, Inc., licensee of Station KACI-FM, The Dalles, Oregon, M.S.W. Communications, LLC, licensee of Station KMSW(FM), The Dalles, Oregon, and Extra Mile Media, Inc., licensee of Station KHPE(FM), Albany, Oregon (collectively "Joint Petitioners"); and obviated the need for Horizon Broadcasting to change its Station KWPK-FM's frequency to Channel 282C2 at Sisters, Oregon. The Settlement Agreement also provided, as consideration for the settlement, that SSR Communications will be compensated in the amount five thousand dollars for its legitimate and prudent expenses incurred in connection with the preparation, filing and advocacy of its counterproposal.

⁹ The Joint Petitioners filed a petition for rule making that was timely filed by the comment deadline in MB Docket 05-10, requesting the reallocation of Station KXPC-FM, Channel 279C to Paisley, Oregon, which conflicted with SSR Communications' proposed allotment of Channel 280C at Monument, Oregon. As such, the petition was treated as a counterproposal in MB Docket 05-10. Specifically, the Joint Petitioners proposed the substitution of Channel 250C2 for Channel 249C2 at The Dalles, Oregon, reallocation of Channel 250C2 from The Dalles to Tualatin, Oregon, as the community's first local service, and modification of the Station KACI-FM license; substitution of Channel 300C for Channel 250C at Eugene, Oregon and modification of the Station KNRQ-FM license; substitution of Channel 279C for Channel 300C at Albany, and modification of the Station KHPE license; substitution of Channel 251A for vacant Channel 299A at Diamond Lake, Oregon; reallocation of Channel 279C from Lebanon to Paisley, Oregon, as the community's first local service, and modification of the Station KXPC-FM license; substitution of Channel 272C2 for Channel 224C3 at The Dalles, Oregon, and modification of the FM Station KSMW license; and substitution of Channel 300C2 for Channel 272C2 at Goldendale, Washington, and modification of the FM Station KYYT license.

suitability issue with respect to the proposed Channel 300C substitution at Eugene, Oregon for Station KNRQ-FM. The Joint Petitioners filed a Petition for Reconsideration.

3. **Comment Summary.** Two Hearts filed a Motion to Sever, requesting severance of MB Docket No. 05-9 from this consolidated proceeding. Two Hearts claims that the actions taken in the *Report and Order* effectively severed MB Docket No. 05-9 from MB Docket No. 05-10 because those actions eliminated the engineering conflict that tied the proceedings together. Moreover, Two Hearts states that the Petition for Reconsideration does not challenge the propriety of any of the allotment changes adopted by the *Report and Order*. Two Hearts also states that while it could proceed with the construction of Station KHSS' new facilities at Athena at its own risk prior to the allotment changes adopted in the *Report and Order* becoming final, it claims that the absence of finality may make it difficult for Two Hearts to obtain the necessary financing to construct the facilities and to reimburse FM Stations KQFM and KQRL for their costs of changing their channels of operation to accommodate the change in Station KHSS' channel allotment.¹⁰ Additionally, Two Hearts notes that even if it were able to obtain the necessary financing before the allotment changes are final, it is likely that FM Station KQFM and FM Station KQRL would be unwilling to implement the required changes in their channels prior to finality. As such, Two Hearts asserts that severance of MB Docket No. 05-9 from this consolidated proceeding will serve the public interest by clearing the way for Two Hearts to proceed immediately with the construction of Station KHSS' new Athena facilities.

4. The Joint Parties filed a Motion to Sever, requesting severance of certain allotments, adopted in the *Report and Order*, from the remainder of MB Docket No. 05-10 given the fact that the Joint Petitioners filed a Petition for Reconsideration concerning only its dismissed counterproposal. The Joint Parties claim that, as a practical matter, the actions taken in the *Report and Order* have already eliminated the conflict between the plans of the Movants and those of the Joint Petitioners. The Joint Parties note that the Petition for Reconsideration did not take issue with any of the allotment changes adopted by the *Report and Order*. As such, the Joint Parties request severance of Channel 280C1 at Monument, Oregon, Channel 260C at Prairie City, Oregon, Channel *247C1 at Weiser, Idaho, and Channel 267C1 at Prineville, Oregon so that these changes to the FM Table can become final. The Joint Parties state that the requested severance would serve the public interest by clearing the way for SSR Communications and others to apply for construction permits on the new allotments, thereby hastening the day when Monument and Prairie City will begin receiving their first local broadcast services and when Prineville will receive an additional service. Moreover, the Joint Parties state that such severance will clarify the future for any party that may wish to apply for vacant Channel *247C1 at Weiser since the channel substitution for this vacant channel will become final if severance is granted. The Joint Parties also state that all parties involved in this consolidated proceeding were notified and have no objections to the grant of the Motion to Sever. Therefore, the Joint Parties request severance of these allotment changes so they can become final.

5. **Discussion.** We will grant both Motions to Sever. We find that severance of these proposals from this consolidated proceeding serves the public interest because it would allow Two Hearts to proceed immediately with the construction of Station KHSS' new Athena facilities, as a first local service; and enable SSR Communications and others to apply for construction permits in a future FM

¹⁰ We issued an *Order to Show Cause* directed at Westend Radio, requesting the licensee to show cause why its Station KQFM's license, File No. BLH-19990520KB, should not be modified to specify operation on Channel 261A in lieu of Channel 263A at Hermiston. Additionally, We issued an *Order to Show Cause* directed at KSRV, Inc., requesting it to show cause why its Station KWRL's license, File No. BLH-19970805KE, should not be modified to specify operation on Channel 225C1 in lieu of Channel 260C1 at La Grande. See *Ione, Oregon; Walla Walla, Washington and Athena, Hermiston, La Grange, and Arlington, Oregon, Order to Show Cause*, 21 FCC Rcd 3335 (MB 2006)

auction on the new allotments at Ione, Monument and Prairie City, as first local FM broadcast services, and Prineville and Weiser, as additional FM commercial broadcast services.

6. Moreover, we conclude that severance is warranted, in this instance, given the fact that the proposals adopted by the *Report and Order* do not conflict with the Joint Petitioner's dismissed counterproposal that is on reconsideration.¹¹ To this end, the approved Settlement Agreement eliminated the existing conflict between the three proposals in MB Docket No. 05-9 and MB Docket No. 05-10. As such, severance of the proposals adopted by the *Report and Order* will not affect the final outcome of the matter on reconsideration. Additionally, we note that the Joint Petitioner's Petition for Reconsideration did not challenge the propriety of any of the allotment changes adopted by the *Report and Order*.

7. Accordingly, the approval of the Settlement Agreement along with the actions taken in the *Report and Order* relating to the allotments of Channel 280C1 at Monument, Oregon, Channel 260C at Prairie City, Oregon, Channel *247C1 at Weiser, Idaho, Channel 267C1 at Prineville, Oregon, Channel 264C2 at Athena, Oregon, Channel 261A at Hermiston, Oregon, Channel 225C1 at La Grande, Oregon, Channel 295C2 at Arlington, Oregon, and Channel 258A at Ione, Oregon are hereby considered final.

8. IT IS ORDERED, That Two Hearts' Motion To Sever IS GRANTED.

9. IT IS FURTHER ORDERED, That the Joint Parties' Motion to Sever IS GRANTED.

10. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau

¹¹ In FM rule making proceedings, when reconsideration of the staff's decision is pending, the staff's decision is considered effective but not final. See *Auburn et al.*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003).